

**State and Local Involvement
in the Superfund Program**



EPA

State and Local Involvement In The Superfund Program

Office of Emergency and Remedial Response
Hazardous Site Control Division (OS-220)

Quick Reference Fact Sheet

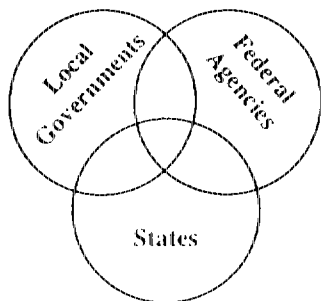
INTRODUCTION

When Congress first enacted the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in 1980, it required States to be active partners in conducting Superfund response actions. Under CERCLA, States with the technical and management capability to carry out a response action may be authorized to lead cleanup efforts at a site. Local communities and certain local government agencies (such as fire departments and public health agencies) also participate in Superfund cleanup operations.

In 1986, Congress amended CERCLA and passed the Superfund Amendments and Reauthorization Act of 1986 (SARA). CERCLA, as amended, strengthens the partnership between the Federal Government and State and local authorities.

State and local governments play an important role in ensuring effective, efficient and well-coordinated cleanups. Often local authorities are the first responders at the scene of a hazardous substance release, providing critical fire protection, security, and health-related services.

HOW STATES AND LOCAL GOVERNMENTS BECOME INVOLVED



The law authorizes the Federal Government to take response actions at a site (Federal-lead), or to transfer the necessary funds and management responsibility to a State (State-lead), to political subdivisions of States or to federally recognized Indian Tribes. Regardless of who has the lead, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR Part 300) is the master plan for Superfund response. Together, CERCLA, as amended, and the NCP, ensure States' involvement in response by requiring EPA to work with States during: 1) negotiations with potentially responsible parties (PRPs), 2) the National Priorities List (NPL) listing and deleting process, 3) study of the site to determine cleanup options, and 4) selection and implementation of the remedy.

CERCLA, as amended, prohibits EPA from providing for a remedial action unless the State makes the following assurances or guarantees:

- Pay part of the cleanup. A State is required to pay 10 percent of the cost of actual cleanup only if the site was privately operated at the time of the hazardous substance release. A State is required to pay 50 percent or more of the total response costs incurred by Superfund if the State or locality operated the site at the time hazardous wastes were disposed there. For example, if an old municipal landfill is found leaking hazardous chemicals, the State would be required to provide at least half the cost of an entire Superfund response. Political subdivisions may provide the cost share, but the State must assure payment in case of default.
- Ensure the availability of a facility(s) for disposal of hazardous materials removed from a site during cleanup. Disposal facilities must comply with all Federal and State requirements, and must not threaten the quality of human health and the environment.
- Ensure that the State's disposal capacity can adequately handle all wastes generated within the State over 20 years (effective starting in 1989).
- Operate and maintain the selected remedy once the cleanup is completed and is proven to be operational and functional. The State assumes full responsibility for future operation and maintenance. Although a political subdivision may manage the actual operation and maintenance of the selected remedy, the State maintains ultimate responsibility.

OVERVIEW OF CERCLA

Congress enacted the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), commonly known as Superfund, in 1980. This law created a tax on the chemical and petroleum industries and provided broad Federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or welfare or the environment. Over five years, \$1.6 billion were collected, and the tax went to a Trust Fund for cleaning up abandoned or uncontrolled hazardous waste sites. The U.S. Environmental Protection Agency (EPA) is responsible for running the Superfund program.

On October 17, 1986, the Superfund Amendments and Reauthorization Act (SARA) was signed into law. SARA increases the Trust Fund to \$8.5 billion over five years, and strengthens EPA's authority to conduct cleanup and enforcement activities.

Under the Superfund program, EPA can:

- Pay for the cleanup of hazardous waste sites when those responsible for such sites cannot be found or are unwilling or unable to clean up a site.
- Take legal action to force those responsible for hazardous waste sites that threaten public health or the environment to clean up those sites or pay back the Federal Government for the costs of cleanup.

The law authorizes two kinds of response actions:

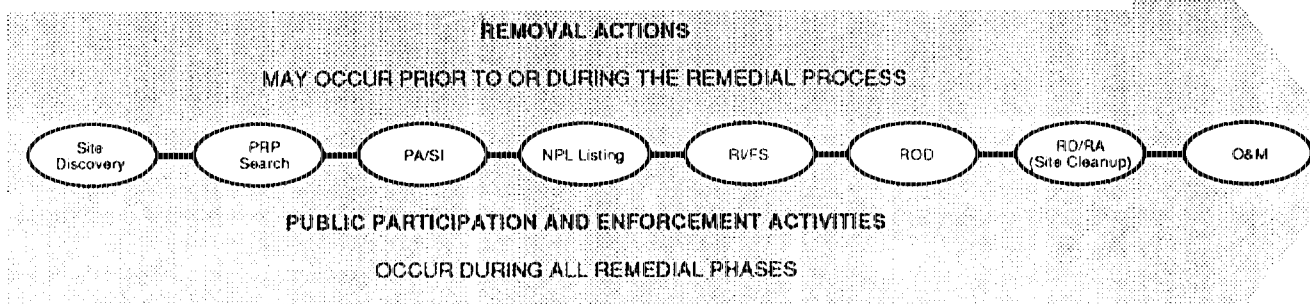
- Short-term *removals* where actions may be taken to address releases or threatened releases requiring prompt response.
- Longer-term *remedial* responses that permanently and significantly reduce the dangers associated with releases or threats of releases of hazardous substances that are serious but not immedi-

ately life threatening. They can be conducted only at sites on EPA's National Priorities List (NPL).

Remedial and removal responses include, but are not limited to :

- Destroying, detoxifying or immobilizing the hazardous substances on the site through incineration or other treatment technologies.
- Containing the substances on-site so that they can safely remain there and present no further threat.
- Removing the materials from the site to an EPA-approved, licensed hazardous waste facility for treatment, containment, or destruction.
- Identifying and restoring contaminated ground water, halting further spread of the contaminants, or in some circumstances providing an alternate source of drinking water.

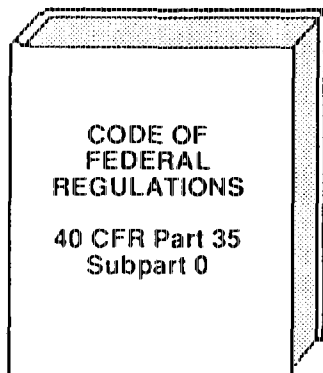
OVERVIEW OF SUPERFUND PROCESS



State and local involvement in the Superfund program varies depending upon the type of response action. During a removal action, which is an action taken over the short term to address a release or threatened release of hazardous substances, often local authorities are the first responders at the incident. For example, a city fire or police department can respond immediately to hazardous substance releases or may serve in a support role to a State or Federal authority conducting removal cleanup activities.

During a remedial action, which is an action intended to stop permanently or substantially reduce over the long term a release or threatened release of hazardous substances, there are many ways for State and local governments to participate. States may conduct the Preliminary Assessment and Site Inspection (PA/SI), the Remedial Investigation and Feasibility Study (RI/FS) or the Remedial Design and Remedial Action (RD/RA). States and local governments also may help identify potentially responsible parties and inform local communities about a cleanup. Whether a site requires a remedial or removal response, the role of State and local agencies is critical in protecting public health and the environment.

MECHANISMS TO ENSURE STATE AND LOCAL INVOLVEMENT

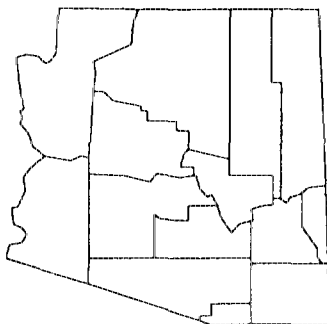


Superfund provides the following mechanisms for State and local involvement:

- Cooperative Agreements transfer funds from EPA to States, political subdivisions thereof, and/or Indian Tribal governments to undertake the lead for site-specific response, or to defray their costs associated with participation in Federal-lead or political subdivision-lead responses or other CERCLA implementation activities. It is also the legally binding document to get assurances when the State does a remedial action. If a State receives funds through a Cooperative Agreement, the State is not prohibited from entering into intergovernmental agreements with political subdivisions for Superfund response.
- Superfund State Contracts are joint, legally binding agreements between EPA and a State or Indian Tribe. Superfund State Contracts provide a vehicle for assuring the transfer of State cost-sharing funds when EPA is leading a response action, for documenting that States meet all required assurances under CERCLA, as amended, and for documenting CERCLA Section 121(f) involvement during a political subdivision-lead response.

Procedures for using Cooperative Agreements and Superfund State Contracts for Superfund responses can be found at 40 CFR Part 35 Subpart O.

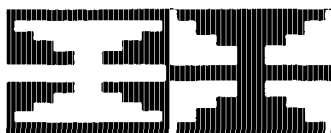
THE ROLE OF POLITICAL SUBDIVISIONS



A political subdivision may be directly involved in a Superfund remedial cleanup. States, however, are required to be active partners. What legally constitutes a political subdivision differs from State to State. It is the responsibility of each State to determine what unit of government meets its legislative definition of a political subdivision (for example, a region, county, or town).

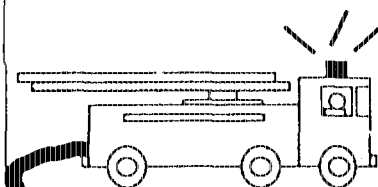
If a political subdivision leads the Superfund response, there are two options available to ensure appropriate State involvement and to provide the required assurances. In the first option, EPA enters into a Cooperative Agreement directly with the political subdivision. In this scenario, EPA must also enter into a three-party Superfund State Contract, which specifies how EPA, the State, and political subdivision will comply with CERCLA Sections 104 and 121 and the NCP. In the second option, EPA enters into a Cooperative Agreement directly with the State. The State, in turn, "passes through" the funds to a political subdivision and enters into a two-party Intergovernmental Agreement with the political subdivision prior to either the State or political subdivision incurring costs for field activities. This second option is similar to a State hiring a contractor to conduct response activities.

THE ROLE OF INDIAN TRIBES



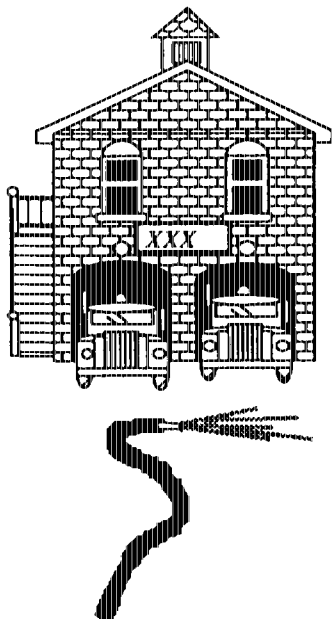
Under the law, EPA is required to treat Indian Tribal governments substantially the same as States. This means that if a Tribe is federally recognized, it may lead a response or may provide support when EPA leads the activities. To be considered substantially equivalent to States, an Indian Tribe must have jurisdiction over a site listed in CERCLIS (EPA's data base of information on hazardous waste sites). Federally recognized Indian Tribes may not have to provide CERCLA Section 104 assurances in all cases. Currently, EPA provides for off-site disposal, and the decision of who will oversee the operation and maintenance of the remedy is made on a case-by-case basis.

THE ROLE OF LOCAL GOVERNMENTS



Local governments also play an important role during a Superfund cleanup. Although most local governments do not have the resources to conduct entire cleanups at hazardous waste sites, localities often provide important public safety measures during emergencies, and may receive some financial assistance under the Local Government Reimbursement (LGR) program (Section 123 of CERCLA, as amended).

The LGR program is intended to alleviate significant financial burden on local governments as a result of conducting temporary emergency measures in response to a hazardous substance threat, and offers assistance of up to \$25,000 per response directly to local governments. Requirements for pursuing reimbursement under CERCLA Section 123 are found in EPA's Interim Final Rule

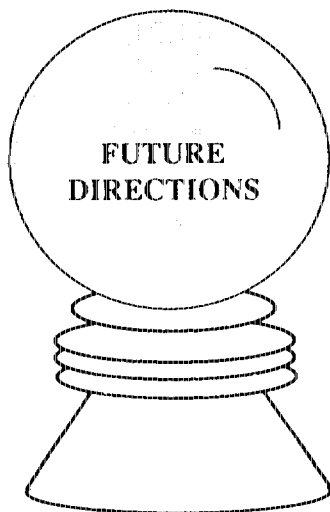


on Reimbursement to Local Governments for Emergency Response to Hazardous Substances Releases (40 CFR Part 310). In addition, EPA has prepared a fact sheet and application package that can be obtained by contacting EPA's RCRA/Superfund Hotline.

Local communities are important sources of information. Localities may be the first to identify a hazardous waste site by bringing it to the attention of State or Federal authorities. Communities can provide valuable details about a Superfund site, including information on the location of sites (site discovery), detail on site history (site investigation), and/or information on potentially responsible parties.

States often will coordinate with local officials to identify community concerns regarding a site cleanup. Throughout all cleanup actions, local officials are kept informed of plans and progress through telephone contacts or visits by EPA and State staff. Communities may also be asked to review and comment on important reports, studies, and proposed actions.

Whether a Federal-lead or State-lead managed response, to guarantee that local citizens are involved in decisions about cleanup actions in their communities, both EPA and the State conduct formal and informal community relations activities. Each NPL site designated for remedial response under Superfund must have an approved Community Relations Plan (CRP) in place before field activities can begin.



As the Superfund program continues to address the hazardous waste issue nationwide, State and local governments will assume an increasingly active role in confronting issues at Superfund sites. Some States have already developed their own State-wide cleanup program to address sites not included on EPA's National Priorities List.

In an effort to support State and local involvement in Superfund responses, EPA has taken several steps:

- Developed a new Subpart to the NCP, the roadmap to conducting responses under CERCLA. This Subpart outlines the requirements for State, local and Indian Tribal involvement in all phases of response.
- Published an administrative rule to complement the general procedures described in the NCP. This rule, Cooperative Agreements and Superfund State Contracts for Superfund Response Actions, can be found at 40 CFR Part 35 Subpart O.
- Developed a series of Directives, designated by the 9375.5 code, which is guidance relating to State, political subdivision, and federally recognized Indian Tribal involvement in the Superfund program.

The Agency also is encouraging States and local governments to participate in EPA-sponsored training programs.

FOR MORE INFORMATION



For more information on State and local involvement in the Superfund program, contact the RCRA/Superfund Hotline at 202-382-3000 or 1-800-424-9346. For a list of directives and publications or information on obtaining copies, contact the Superfund Docket & Information Center (SDIC) at 202-382-6940.

For more information on training opportunities for State and local governments and Indian Tribes, contact the Superfund Training Coordinator in EPA's Office of Solid Waste and Emergency Response at 202-382-4364.